IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 44 of 2003
With
COMPANY PETITION No. 277 of 2000
With
COMPANY PETITION No. 108 of 2002
With
COMPANY PETITION No. 187 of 2002
With
COMPANY PETITION No. 106 of 2003
With
COMPANY PETITION No. 304 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LARSEN & TOUBRO LTD. - Petitioner(s)
Versus
SPS ENGINEERING LTD. & 3 - Respondent(s)

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Appearance :
SINGHI & CO for Petitioner(s) : 1,
MRS YOGINI V PARIKH for Respondent(s) : 1,
MR MANISH R BHATT for Respondent(s) : 2,
MR PV NANAVATI for Respondent(s) : 3,
MR VIBHUTI NANAVATI for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/03/2006

ORAL JUDGMENT

1. Shri Bijal Chhatrapati, learned advocate appearing on behalf of the petitioner in Company Petition No.44 of 2003 under the instructions of his client seeks permission to withdraw this company petition. Permission as sought for is granted. Company Petition No.44 of 2003 accordingly stands disposed of as withdrawn.

2. So far as the aforesaid Company Petitions are concerned, they are filed by the respective petitioner under Section 433 and 434 of the Companies Act, 1956 for an appropriate order of winding up of the respondent company i.e. SPS ENGINEERING LTD as the respondent company has failed to pay the dues of the respective petitioners in spite of the repeated reminders and demand and not only that but the respondent company and their Directors have not even paid the amount as per the undertaking filed by them

before this Court and has committed even breach of the undertaking filed by them.

3. All the respective petitioners have preferred the aforesaid company petitions for the aforesaid relief. All these company petitions are admitted and by order dated 15.3.2004 in Company Petition No.108 of 2002 with Company Petition No.106 of 2003 with Company Application No.409 of 2003, the learned Single Judge of this Court passed order on 15.3.2004 for publication of advertisement and dispensed with notice of publication of advertisement in the Government Gazette. That thereafter all the company petitions were directed to be heard together. When the aforesaid company petitions came to be heard by the learned Single Judge on 10.3.2004, a request was made on behalf of the respondent company to grant them some time for making payment to the petitioning creditors as they were expecting some amount from their suppliers and

considering the same, the learned Single Judge of this Court directed the respondent company to pay at least 10 % of the outstanding dues of each petitioning creditors within two weeks from 10.3.2005 and the petitions were adjourned to 24.3.2005. The respondent company was also directed to produce annual accounts for the year 2003 and 2004. It appears that the aforesaid petitions came up for hearing on 24.3.2005 and this Court noted that payment of 10 % to each petitioning creditor is not made though directed by this Court earlier, however, in view of the sick note of the learned counsel appearing on behalf of the respondent company, all the petitions were adjourned to 30.3.2005 and this Court considered the affidavit filed by one Shri S.K.Das, Director of the respondent company that the company would be in a position to make payment to the petitioning creditors within 60 days. However, this Court insisted that he may file an undertaking for the same and therefore,

the petitions were adjourned to 5.4.2005. It appears from the record that pursuant to the order passed by this Court on 30.3.2005 one S.K.Das, Director of the respondent Company has filed undertaking dated 5.4.2005 before this Court whereby he has undertaken to make payment of the outstanding principal amount to the petitioning creditors within 60 days from the date of the filing of the undertaking i.e. latest by 5.6.2005. This Court also observed that if the amount is not paid by the respondent company to each of the petitioning creditor as per the undertaking, the respondent company would be liable to be wound up and over and above this, appropriate action may also be taken if any breach is committed of the aforesaid undertaking and the petitions were adjourned to 30.6.2005. Thereafter, these petitions came to be heard by this Court time and again and the respondent company deposited an amount of Rs.11.00 Lakhs with the Registry of this Court. However, this

Court further directed by order dated 11.8.12005 directing the respondent company to deposit sum of Rs.13.00 Lakhs on or before 13.9.2005 which was not deposited by the respondent company and on 16.9.2005 three weeks' time was sought by the respondent company to deposit the aforesaid amount as ordered and time as sought for was granted, however, it was observed that if there is failure on the part of the respondent company to deposit the amount, no useful purpose would be serve in allowing the operation of the company with the present Board of Directors and since the mater is already admitted the Official Liquidator may take over the charge as provisional liquidator in the event there is failure on the part of the respondent company to deposit the amount of Rs.13.00 Lakhs. The respondent company was directed to deposit an amount of Rs.13.00 Lakhs on or before 13.10.2005 with the Registry of this Court. It appears that as the aforesaid amount of Rs.13.00 Lakhs was not paid, the

Official Liquidator has taken over possession of the properties of the respondent company as provisional liquidator. However, it was submitted at the time of hearing on 27.10.2005 that there are two important contracts on the hands of the company and the first one is for Rs.3.9 crores where job work of 50 % is done and will be completed by January, 2006 and the company is likely to get about Rs.15.00 Lakhs and the second one is a contract of Rs.2.00 crores which the company likely to compete in December, 2006 and the company expected to earn the profit of about Rs.20.00 Lakhs and therefore, a request was made to permit completion of the contract. It was also submitted on behalf of the company that the respondent company has no objection if the amount which may be realized from the contracts is deposited in a separate account with the Official Liquidator or any arrangement as may be found proper by this Court and in that view of the matter, this Court directed to produce on record

the particulars and details of the contract. Thereafter, the present petitions came to be adjourned from time to time and today they are placed before this Court for final hearing.

4. Learned counsel appearing on behalf of the petitioners have submitted that the respondent company has not even deposited the amount of Rs.13.00 Lakhs as directed by this Court and that even they have not acted as per the undertaking given by the Director on behalf of the respondent company that they would be paying the principal amount within 60 days and that there is breach of undertaking. It is submitted that the respondent company has become insolvent and is not in a position to pay its debts of the petitioning creditors and the company has lost its substratum. Therefore, it is requested to allow the present petitions and to pass final order of winding up of the respondent No.1 company.

5. Ms.Yogini Parikh, learned advocate appearing on behalf of the respondent company has submitted that in view of non availability of the fund, it is not possible for the respondent No.1 company to complete the work as per the contracts which is referred to hereinabove and it is not possible to get now any further amount.

6. Considering the fact that the respondent company has not paid the dues to the respective petitioners – petitioning creditors and even the respondent company has not even deposited amount of Rs.13.00 Lakhs as directed by this Court to show their bonafide and considering the fact that there is breach of an undertaking given by the Director of the respondent company to make payment of principal amount within a period of 60 days and latest by 5.6.2005, there is no doubt and dispute now that the respondent company is not in a position to pay its debts and that the respondent company is not viable and it is not

possible to revive the respondent company and that the respondent company has become insolvent and has lost its substratum. Under the circumstances, the respondent company is required to be wound up.

7. Under the circumstances, all the aforesaid petitions are allowed. The respondent No.1 company - **SPS ENGINEERING LTD** is ordered to be wound up. The Official Liquidator of the respondent company attached to this Court who is already appointed as Provisional Liquidator is hereby asked to take all consequential actions on passing of the order of winding up of the respondent company and shall submit its report . It is reported that the Official Liquidator has already submitted its report being OLR No.91 of 2005 in Company Petition No.44 / 2003. However, in view of withdrawal of the Company Petition No.44 of 2003, the said OLR NO.91 of 2005 be treated to have been filed in Company Petition

No.304 of 2000 and the same will be considered hereinafter. All these company petitions are accordingly allowed. No costs.

8. Now Office to place OLR NO.91 of 2005 before this Court for passing further orders.

[M.R.Shah, J.]

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